



REPUBLIC OF SAN MARINO

**We the Captains Regent of
the Most Serene Republic of San Marino**

Having regard to Article 4 of Constitutional Law no. 185/2005 and Article 6 of Qualified Law no. 186/2005;

Hereby promulgate and order the publication of the following ordinary law approved by the Great and General Council in its sitting of 19 January 2010.

LAW NO. 5 OF 21 JANUARY 2010

Amendments to Law no. 165 of 17 November 2005 “Law on companies and banking, financial and insurance services”

Article 1

Paragraph 1 of Article 36 of Law no. 165 of 17 November 2005 shall be superseded by the following:

“1. By “bank secrecy” is meant the prohibition on authorised parties to reveal to third parties, without the specific and express authorisation in writing of the party concerned, the data and information acquired in the exercise of the reserved activities referred to in Attachment 1.”.

Article 2

Paragraph 2 of Article 36 of Law no. 165 of 17 November 2005 shall be superseded by the following:

“2. The directors, internal and external auditors, actuaries and employees of any type and grade, including those on placements or in periods of vocational training, external consultants, company representatives, liquidators, commissioners, members of the supervisory committee of the authorised parties will be bound by the obligation of banking secrecy.”.

Article 3

Paragraph 4 of Article 36 of Law no. 165 of 17 November 2005 shall be superseded by the following:

“4. The obligation of banking secrecy covering the data and information referred to in paragraph 1 will also be binding on natural persons or the directors, employees, internal and external auditors of the companies to which the authorised parties have outsourced functions and, consequently, disclosed such data and information.”.

Article 4

Paragraph 5 of Article 36 of Law no. 165 of 17 November 2005 shall be superseded by the following:

“5. Banking secrecy cannot be evoked against the following parties in the exercise of their public functions:

- a) the Law Commissioner in criminal cases;
- b) the Central Bank of the Republic of San Marino in the exercise of its supervisory functions;
- c) the Financial Intelligence Agency;
- d) the Central Liaison Office and other San Marino public bodies and offices responsible for the direct exchange of information with foreign counterparts in accordance with the international Agreements in force.”.

Article 5

Paragraph 6 of Article 36 of Law no. 165 of 17 November 2005 shall be superseded by the following:

“6. No breach of banking secrecy will be deemed to have occurred if:

- a) communication to third parties is necessary in order to fulfil obligations arising from a contract to which the interested person is a party or in order to comply, before the conclusion of the contract, with that person’s specific, express requests;
- b) communication to third parties takes place in the context of a litigation between the interested person and the authorised party. In this case, communication to third parties may regard any relationship between the parties, even if it is not the subject-matter of the dispute but it is related to legal defence;
- c) communication is being made to the parent company, whether a San Marino or of a foreign State with which a relevant international agreement is in force, and is directed to comply with the rules concerning consolidated supervision referred to in Part II, Title I, Chapter III of this Law;
- d) communication is being made to parties carrying out the reserved activity referred to in section H of Attachment 1, who are so authorised according to this Law, and its subject is the information strictly necessary in arriving at a proper assessment of the risks and to fulfil obligations entered into in the exercise of that reserved activity;
- e) communication is directed towards the performance of the services described in articles 50 and 51 and complies with the provisions of those articles.”.

Article 6

Paragraph 7 of Article 36 of Law no. 165 of 17 November 2005 shall be superseded by the following:

“7. In the event of the decease of the party concerned or the opening of insolvency or interdictory or disqualification proceedings against him, the heir, receiver in insolvency, tutor and guardian respectively, together with those persons commissioned to draw up an inventory of the assets of the incompetent or disqualified party, are entitled to obtain the data and information covered by banking secrecy, also covering the period prior to the death or judicial measure by which they have been appointed.”.

Article 7

This Law enters into force on the 5th day following that of its legal publication.

Done at our Residence, on 21 January 2010

THE CAPTAINS REGENT
Francesco Mussoni – Stefano Palmieri

THE SECRETARY OF STATE
FOR INTERNAL AFFAIRS
Valeria Ciavatta